

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on January 15, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 59, 1/10/2003; SB64,
1/10/2003
Executive Action: SB 15; SB 56; SB 64; SB 59

HEARING ON 64

Sponsor: SEN. BOB KEENAN, SD 38, BIG FORK,

Proponents: Ed Amberg, Administration of the Montana State Hospital

Opponents: None

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, BIG FORK, stated that SB 64 was requested by the Department of Public Health and Human Services (DPHHS). The intent is to provide notice of the filing of petitions for civil commitment of persons alleged to suffer from a mental disorder to the DPHHS. The reason is so that the administration can plan for these admissions.

Proponents' Testimony:

Ed Amberg, Administrator of the Montana State Hospital, rose in support of SB 64 which would require counties to notify the Montana State Hospital at the time the petition for a commitment to the hospital is filed. They have approximately 450 involuntary commitments per year and approximately 50 forensic commitments per year. Sometimes people arrive at the hospital with significant medical and cure needs. The advanced notice will help identify their needs and prepare for their care. There are times when patients need to be moved because new patients are arriving. This will allow for a more orderly transition process. Occasionally, they may be able to work with the mental health professional in the community who are preparing the evaluation in regard to identify possible alternatives. The Department will be provided with data on the number of petitions for commitment that are filed. There is proposed legislation this session to switch the responsibility for pre-commitment costs from the county to the state. No one at the state has good data on the number of commitments filed each year. They do not know the number of petitions that are dismissed or the number of persons placed elsewhere.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. DAN MCGEE asked for an example of an involuntary commitment and a forensic commitment. Mr. Amberg explained that the

involuntary civil commitments are covered in Section 54. They are for people who need mental health treatment due to a mental disorder. As a result of that mental disorder they are found to be dangerous to themselves or others and there are no less restrictive community alternatives. Forensic commitments are for persons involved in the criminal justice system. There are several different types. Competency evaluations are prepared for the court and the determination is whether or not they are competent to stand trial. Unfit-to-proceed evaluations are prepared when there is a finding that they are unable to proceed with criminal procedures due to their mental disorder. Another evaluation is the not guilty by reason of mental illness. There is also the commitment of guilty but mentally ill. Prison inmates who are transferred to their facility are also considered to be forensic commitments.

SEN. MCGEE questioned whether the involuntary civil commitments would include any alcohol or drug exclusive individuals. **Mr. Amberg** maintained that under the law these commitments should not include solely intoxication or substance abuse problems. In some cases, this is the major problem but the person has been labeled as having another disorder. Sometimes there is a problem in the community and the community is looking for some way to resolve this problem.

SEN. JERRY O'NEIL noted that the bill stated that the information needed to be hand delivered or mailed. He wondered whether the information could be faxed. **Mr. Amberg** maintained that it would be preferable to have the information faxed.

SEN. MIKE WHEAT stated that the bill only required the notice of the filing of petitions. **Mr. Amberg** stated that they have a good relationship with the county attorney offices and the hospital staff would follow up on the disposition of the petitions.

SEN. BRENT CROMLEY suggested that language be added so that the petition stated the name and address of the mental health facility to which it is proposed the person be committed. **Mr. Amberg** agreed with this suggestion.

CHAIRMAN DUANE GRIMES questioned whether the hospital would ever object to a commitment proposal. **Mr. Amberg** stated that if the individual has serious medical problems beyond which they would have the capacity to provide care, they would discuss this with the court and county attorney involved. Sometimes the services they provide are not clearly understood by people in the community.

SEN. MCGEE questioned whether it would be appropriate to include the process of e-mailing the petitions to the hospital. **Mr. Amberg** raised a concern that e-mail may not be very secure.

Closing by Sponsor:

SEN. KEENAN closed on SB 64.

CHAIRMAN GRIMES stated that **SEN. ELLIOT** had requested to withdraw the hearing on SB 129 which was scheduled for today's meeting.

HEARING ON SB 59

Sponsor: **SEN. JERRY O'NEIL, SD 42, COLUMBIA FALLS**

Proponents: **None**

Opponents: **None**

Opening Statement by Sponsor:

SEN. JERRY O'NEIL, SD 42, COLUMBIA FALLS, introduced SB 59 which addresses a jury of inquest. A jury of inquest would have the authority to investigate facts. It would not have the power to indict and the proceedings would be open to the public. A grand jury has the power to indict and the proceedings are in secret. If a jury of inquest finds a problem, this report is filed in the district court and would be open to the public and the press. This bill expands juries of inquest to allow them to be called by the governor, secretary of state, state auditor, or the legislature. Instances where the jury of inquest could be used might include alleged abuse in the Pine Hills Correctional Facility or an alleged use of mace or pepper spray incorrectly by guards. There are times when a county attorney may refuse to prosecute. A jury of inquest could review this situation and if the facts are substantial, the report could be filed with the district court. The only time a grand jury has been used in Montana was in the workers' compensation scandal approximately 20 years ago. At that time in order for a grand jury to be empaneled, the county attorney needed to apply to the Montana Supreme Court for a Writ of Mandamus forcing the judge to empanel a grand jury. The grand jury is not sufficiently available to the public.

A jury of inquest would have less power than a grand jury. Responsible persons would have the power to call a jury of inquest.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JEFF MANGAN asked what procedures would be used by the legislature to call a jury of inquest. **SEN. O'NEIL** clarified that this would involve a bill being presented. The legislature could have someone in either majority or minority leadership handle this situation. Currently the legislature only uses bills.

SEN. MANGAN stated that on page 3, line 30, there is language stating that a jury of inquest is a body of persons summoned from the citizens of a particular district. If statewide officials called a jury of inquest, would the district be the State of Montana. **SEN. O'NEIL** stated that the intent is that the jury of inquest could be appointed from the county or district involved and this would not need to be statewide.

SEN. MANGAN questioned whether the secretary of state or the legislature could call a jury of inquest to investigate the governor. **SEN. O'NEIL** affirmed that they would be able to do so.

Tape: 1; Side: B

SEN. CROMLEY raised a concern about the lack of proponents or opponents. **SEN. O'NEIL** stated that this concept has been discussed with many people. Some people believe the bill does not demand enough. They would like a grand jury to be set every month for everyone to air their complaints. The jury of inquest should not put the government in the spotlight every day of the week but it would allow persons some recourse if they believe a government official is involved in wrongdoing but has the authority to cover up the situation.

SEN. MCGEE stated that the mileage, witness fees, etc., would be paid by the entity summoning the jury. This could include state officials. Is there a way for these entities to be reimbursed.

SEN. O'NEIL stated that this is not provided for in the bill. He would agree to a friendly amendment in that regard. This would involve a fiscal note.

SEN. WHEAT questioned whether the persons who would be affected by the bill were asked to be at the hearing today. **CHAIRMAN GRIMES** noted that the individuals affected probably should have

been notified. Executive action could be delayed until the persons affected could be contacted for their comments.

CHAIRMAN GRIMES questioned whether or not the Attorney General's Office was left off intentionally. **SEN. O'NEIL** explained that the Attorney General has access to a grand jury as well as its own investigate powers.

CHAIRMAN GRIMES asked if the officials named in the bill would call juries of inquest for their areas of responsibility. **SEN. O'NEIL** stated they should have the full power. If there was an allegation against a state official, another state official could call the jury of inquest.

SEN. GARY PERRY noted that a jury of inquest currently may be summoned from the citizens of a particular district before the sheriff, coroner, or other ministerial officer. He believed that the statewide officials added in the bill were already included under the term "ministerial officer". **SEN. O'NEIL** agreed but maintained that the term "ministerial officer" had not been defined. Since people do not know they have this power, they have not done so. This will let the public know that if they believe there is corruption in a certain area, these are the people who can have the matter investigated.

CHAIRMAN GRIMES asked for information regarding the use of juries of inquest in Montana. **SEN. O'NEIL** stated that the jury of inquest used is the coroner's jury. This is used when a police officer is involved in a shooting incident where someone dies. It is also used if an individual dies in detention.

CHAIRMAN GRIMES noted that in the past allegations have been made in regard to the Governor's Office. With this legislation in place, there would be political pressure put on a party to call a jury of inquest in the matter. This could be used as a political tool. **SEN. O'NEIL** stated that if there were allegations against the Governor's Office, a jury of inquest would have been available earlier and the situation would have been disposed of in a more expedient manner.

CHAIRMAN GRIMES remarked that an interim committee could not call a jury of inquest because they would be acting in official capacity for the body of the whole. A joint resolution would be necessary to enact a jury of inquest. **SEN. O'NEIL** stated that may be necessary at this time. The Legislature has the power to set its own rules and they may adopt rules for calling a jury of inquest.

SEN. AUBYN CURTISS asked whether the passage of the bill would provide the legislature more facility in investigating the State Fund matter that has surfaced recently. **SEN. O'NEIL** believed that it would.

Closing by Sponsor:

SEN. O'NEIL closed on SB 59.

EXECUTIVE ACTION ON SB 15

Motion: **SEN. O'NEIL** moved that **SB 15 DO PASS.**

Discussion:

{Tape: 2; Side: A}

CHAIRMAN GRIMES raised a concern that this bill may set a death penalty disproportionately to the crime. An expedited death penalty sentence may result due to another felony.

SEN. O'NEIL stated that in regard to a violent rape case, when the prisoner is out on parole and violates the parole the person is then sent back to prison to finish the term. This would be a penalty out of proportion to the crime of violating the parole. The crime was the rape and not going into the bar for a beer.

SEN. PERRY stated that the Attorney General's Office and the warden at the state prison opposed this bill.

SEN. CROMLEY raised a concern regarding the constitutional ramifications of this bill. The U.S. Supreme Court has set high standards to allow a state to impose the death sentence.

SEN. O'NEIL remarked that in this situation the jury would determine aggravating and mitigating circumstances when the individual was sentenced to death in the first place. The facts have already been determined. While in prison the decisions can be appealed. If parole is violated, the previous sentence should be carried out. The due process right is not taken away.

SEN. WHEAT maintained that this bill has serious due process constitutional complications. If someone is sentenced to death and the death penalty is being appealed, under this bill, they would be executed before the appellate process is over.

SEN. O'NEIL stated that when a death sentence is appealed there would be a stay on that sentence. As long as the stay is in

existence, the execution could not be carried out. An amendment could be added to address this issue.

Vote: Motion failed 1-8 with O'Neil voting aye.

Motion/Vote: SEN. GRIMES moved that SB 15 BE INDEFINITELY POSTPONED. Motion carried 8-1 with O'Neil voting no.

EXECUTIVE ACTION ON SB 56

Motion/Vote: SEN. MANGAN moved that SB 56 BE RECONSIDERED. Motion carried unanimously.

Motion: SEN. MANGAN moved that SB 56 DO PASS.

Discussion:

CHAIRMAN GRIMES recapped that the bill addressed persons found not guilty by reason of mental disease or defect would not be committed for any longer than the longest offense of any of the offenses. A clarification needs to be made to ensure that this addresses the longest of the charged sentences rather than any one of the sentences. It was brought out in the hearing that consecutive terms should not be used because the individuals do not have the same rights to plea bargain.

SEN. MCGEE questioned whether an involuntary commitment action was necessary under the bill. CHAIRMAN GRIMES stated that if any of the entities believed that the individual should not be released, they could use the involuntary commitment procedures.

Motion: SEN. MCGEE moved that SB 56 BE AMENDED.
EXHIBIT (jus08b01)

Discussion:

SEN. MCGEE stated the amendment attempted to clarify that this involved the longest sentence of one charge.

SEN. O'NEIL believed that under the amendment the charge that could be used could involve the sentence of ten years for auto theft instead of 50 years for a homicide.

{Tape: 2; Side: B}

CHAIRMAN GRIMES questioned whether the language would provide that the judge would need to use the longest offense.

Ms. Lane remarked that without the bill, there would be an indefinite sentence. A person could end up being at an institution many more years than he could have been for the underlying crime that he had committed. A policy decision was made by the Legislative Finance Committee to not have consecutive sentences. The amendment is intended only to clarify this.

SEN. WHEAT suggested removing the word "all" and inserting "among the". The language would read, "The maximum sentence is limited to the longest sentence from among the charged offenses."

Ms. Lane did not believe the language would state that the judge would have to commit the person for the longest maximum time possible. She believed the intent was that the judge could not commit the person for any time longer than the longest time the person could have been committed to prison.

SEN. O'NEIL maintained that his understanding was in the case where there is more than one offense charged the maximum sentence is limited to the longest offense of any one of the charged offenses. Stealing a car could be a charged offense so the individual could be sentenced to the longest sentence for car theft. A different offense could be chosen.

Substitute Motion: **SEN. O'NEIL** moved to **AMEND SB 56.**

Discussion:

He proposed a substitute amendment which would read, "If there is more than one offense charged, the maximum sentence is limited to the longest sentence of the offense charged which bears the longest possible sentence."

SEN. MCGEE offered to withdraw his motion to amend. He believed the original language was written correctly. The language considered all the charged offense and the longest sentence would be used.

SEN. O'NEIL and **SEN. MCGEE** withdrew their motions to amend.

Motion: **SEN. O'NEIL** moved to **AMEND SB 56.**

Discussion:

SEN. O'NEIL proposed the language "The maximum sentence is limited to the longest sentence from all charged offenses to be served concurrently." He wanted to differentiate between concurrent and consecutive sentences.

SEN. WHEAT agreed that the original language is clear and the amendment would make the language confusing.

SEN. MCGEE remarked that the intent was to place the limit on all "charged" offenses, not consecutive sentences. The maximum sentence would be limited to the longest sentence from all charged offenses. There could be a dozen charged offenses, but this language would limit it to the longest sentence from all the charged offenses.

SEN. O'NEIL withdrew his motion.

SEN. PERRY maintained that the objective is to use only one sentence, not multiple sentences. The limit should be the one sentence that carries the longest sentence of the charges. His suggestion was to use the language, "The maximum sentence is limited to the sentence that carries the longest sentence of the charged offenses."

Ms. Lane clarified that the charge would carry the sentence.

SEN. MANGAN summarized that one choice would be to keep the current language in the bill. **SENATORS MCGEE, WHEAT, and MANGAN** agreed that the language works. The other choice would be to use the substitute language offered by **Greg Petesch**.

SEN. GERALD PEASE believed the amendment would defeat the purpose of the bill. The bill is an act limiting the period of confinement.

SEN. MANGAN stated that page 3 refers back to 46-14-214. He questioned whether more specificity was needed so that the other crimes charged could not be considered. **Ms. Lane** agreed that the language did not match the language on page 1. She believed the amendment prepared by **Mr. Petesch** would be helpful. The language on page 1 anticipates that there could be several charges and limits the maximum sentence to the longest charge. The language on page 3 does not recognize that there could have been more than one offense charged.

CHAIRMAN GRIMES believed that using the words "from all charged offenses" would clarify that this was not consecutive.

{Tape: 3; Side: A}

Motion: **SEN. MCGEE** moved that **SB 56 BE AMENDED**.

Discussion:

CHAIRMAN GRIMES explained that on page 1, line 20, the word "single" would be inserted after the word "longest". This would read: "The maximum sentence is limited to the longest single sentence from all charged offenses."

SEN. O'NEIL remarked that a person charged with three crimes could be charged with a single sentence.

SEN. MCGEE maintained that the bill addressed the longest sentence from all the charged offenses.

SEN. WHEAT clarified that if a person was convicted of multiple offense, that person would be sentenced on each offense. The court would then make a determination as to whether those sentences were to run consecutively or concurrently. The court does not hand down one sentence.

Vote: Motion **carried unanimously.**

Ms. Lane stated that she had been working on an amendment to address **SEN. MANGAN's** concerns. On page 3, line 4, following the words "may not exceed the", the remainder of the language would be stricken through "46-14-214" on line 6. It would read: "The period of commitment may not exceed the maximum sentence determined under 46-14-214(2)."

Motion/Vote: **SEN. MCGEE** moved that **SB 56 BE AMENDED. Motion carried unanimously.**

SEN. WHEAT raised a concern about the language on line 7. If someone has been committed, they have been found not guilty of a very serious crime. At the time their commitment runs out, it should be incumbent on the Department to make a determination if, in fact, that person still suffers with the same mental disease or defect before they are released.

CHAIRMAN GRIMES noted that the judge would be left with the discretion as to whether they would be safe in the community. He further added that they would have annual reviews by a professional person who would be making suggestions to the court.

Motion/Vote: **SEN. MCGEE** moved that **SB 56 DO PASS AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 64

Motion: **SEN. MCGEE** moved that **SB 64 DO PASS.**

Substitute Motion: **SEN. CROMLEY** made a substitute motion that **SB 64 BE AMENDED, EXHIBIT(jus08b02).**

Discussion:

SEN. CROMLEY explained the petition would contain the name and address of the particular mental health facility. Sending the information via a facsimile transmission would be included.

SEN. WHEAT would add the words "if known" to the end of amendment 2. The insertion was added to the amendment.

Vote: Motion **carried unanimously.**

Motion/Vote: **SEN. MCGEE** moved that **SB 64 DO PASS AS AMENDED.**
Motion **carried unanimously.**

EXECUTIVE ACTION ON SB 59

Motion: **SEN. O'NEIL** moved that **SB 59 DO PASS.**

Discussion:

SEN. WHEAT raised a concern that the bill was very expansive and extended powers to various elected officials and the legislature which may be good in concept but, in practice, may cause a lot of problems.

SEN. MCGEE referred to page 4, line 1, and noted that the words "or other ministerial officer". He questioned whether the term "ministerial officer" could include the governor, secretary of state, state auditor, etc.

SEN. WHEAT affirmed this could be the interpretation.

SEN. MCGEE questioned whether the essence of the bill would then be the found on page 4, lines 3-20.

Ms. Lane stated she was not sure what the term "ministerial officer" would mean. Juries of inquest typically review deaths. She was not sure that the persons set out in the bill could perform the duties without the bill.

CHAIRMAN GRIMES raised a concern that the bill could be used in very aggressive fashions for political purposes beyond the intent of the sponsor.

SEN. O'NEIL remarked he would be agreeable to having the bill clean up existing law. The wording "or other ministerial officer" could be left in the bill. A jury of inquest currently

would have subpoena powers. This would specify in detail what is already in place.

Vote: Motion failed 2-7 with MCGEE and O'NEIL voting aye.

Motion/Vote: SEN. GRIMES moved that SB 59 BE INDEFINITELY POSTPONED. Motion carried 7-2 with MCGEE and O'NEIL voting no.

ADJOURNMENT

Adjournment: 10:12 A.M.

SEN. DUANE GRIMES, Chairman

JUDY KEINTZ, Secretary

DG/JK

EXHIBIT (jus08bad)